



January 9, 2001

Mr. Kevin E. Oliver
Cooper & Scully
900 Jackson Street, Suite 100
Dallas, Texas 75202

OR2001-0096

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 143107.

The City of Coppell (the "city"), which you represent, received a request for information regarding a complaint of burglary of a vehicle. You have submitted for our review as responsive to the request Incident Report #00-23223 and related documents. You assert that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, and under section 552.108(a)(2) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 58.007(c) of the Family Code states:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

This provision applies to juvenile law enforcement records concerning conduct of a juvenile offender or suspect occurring on or after September 1, 1997. Here, the submitted information involves conduct that occurred after September 1, 1997. A "child" as that term is used in section 58.007 is defined by section 51.02 of the Family Code, which provides that a "child" is a person who is:

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Fam. Code § 51.02(1). The information you have provided does not indicate the age of the suspect at the time of the incident. Section 58.007 does not apply where the information in question involves only a juvenile complainant or witness and not a juvenile suspect or offender. If the suspect who is identified in the submitted information was "ten years of age or older and under 17 years of age" at the time of the incident, we conclude that the submitted information is confidential in its entirety under section 58.007 of the Family Code and therefore must be withheld pursuant to section 552.101. If, on the other hand, the suspect was seventeen years of age or older at the time of the incident, we conclude that none of the information is made confidential by section 58.007 of the Family Code. In the event the suspect does not meet the definition of a "child," we next address the section 552.108(a)(2) assertion.

In relevant part, section 552.108 provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the submitted information does not explain on its face how and why its release would interfere with law enforcement. You assert only section 552.108(a)(2), and you state the investigation *has not yet resulted* in a conviction or deferred adjudication. This statement implies that the investigation or prosecution of this matter is pending. You do not otherwise advise this office of the status of the case. The submitted information indicates the investigation to be inactive pending further leads. Because section 552.108(a)(2) applies to information that *did not result* in a conviction or deferred adjudication, we believe this provision is applicable only where the matter has reached a *final result* other than conviction or deferred adjudication. We cannot assume in this instance that the matter has reached such a final result. We therefore conclude you have not demonstrated the applicability of section 552.108(a)(2). Because you make no additional arguments or representations with reference to the section 552.108 claim, we conclude that none of the information is excepted from disclosure under section 552.108.

We note, however, that in the event the suspect identified in the submitted records does not meet the definition of a "child," portions of the information contained in the submitted documents must be redacted prior to their release. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license numbers, vehicle identification number, and license plate numbers we have marked under section 552.130.

In addition, you may be required to redact the social security numbers that we have marked. A social security number is excepted from required public disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant

to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the submitted documents are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any of the social security number information we have marked, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, if the suspect identified in the submitted records was ten years of age or older and under 17 years of age at the time of the incident, the city must withhold the submitted information in its entirety pursuant to section 552.101 in conjunction with section 58.007 of the Family Code. Otherwise, the information is subject to release to the requestor, except the city must first redact the information we have marked as excepted under section 552.130, and the city may be required to redact the social security numbers we have marked, as provided above.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report

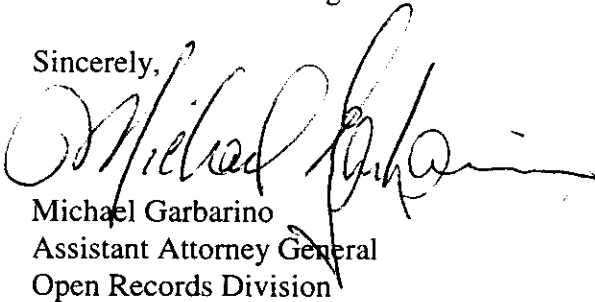
that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 143107

Encl. Marked documents

cc: Mr. Terry Born
P.O. Box 1652
Coppell, Texas 75019
(w/o enclosures)